

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JB NICHOLAS,

Plaintiff,

-against-

BASIL SEGGOS, COMMISSIONER, NEW
YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, et al.,

Defendants.

23-CV-2455 (LTS)

TRANSFER ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action under 42 U.S.C. § 1983, alleging that the New York State Department of Environmental Conservation (“DEC”) has refused to process his application for an outdoor guide license in violation of his rights. He sues Basil Seggos, the Commissioner of DEC, and Gaye Somogie, the Licensed Guide Program Coordinator for DEC. Plaintiff also submits a motion for preliminary injunction. For the following reasons, this action is transferred to the United States District Court for the Northern District of New York.

DISCUSSION

Under 28 U.S.C. § 1391(b), a civil action may be brought in

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . ; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.

Under Section 1391(c), a “natural person” resides in the district where the person is domiciled, and an “entity with the capacity to sue and be sued” resides in any judicial district where it is subject to personal jurisdiction with respect to the civil action in question. *See* 28 U.S.C. § 1391(c)(1), (2).

Plaintiff, who is a resident of Malone, New York, alleges that DEC's Commissioner and Licensed Guide Program Coordinator violated his rights by not issuing him an outdoor guide license. He does not specify where any of the defendants reside nor assert where the alleged events giving rise to his claims occurred. Because it is unknown where Defendants reside or where the claims occurred, it is unclear whether venue is proper under Sections 1391(b)(1) or (2) in this District. Plaintiff's residence, however, is located in Franklin County, which is in the United States District Court for the Northern District of New York. *See* 28 U.S.C. § 112(a). Further, because the defendants are employed by DEC, which has its principal office in Albany, New York, they could be deemed to reside in the Northern District of New York. *See id.*; *see also Cain v. New York State Bd. of Elections*, 630 F. Supp. 221, 225 (E.D.N.Y. 1986) ("In a suit against a public agency and its officials, 'residence,' for venue purposes, is where the officials involved perform their duties.") (citation omitted). Venue could therefore be proper under Sections 1391(b)(1) or (2) in the Northern District of New York.

Under 28 U.S.C. § 1404(a), even if a case is filed in a jurisdiction where venue is proper, a court may transfer the case to any other district where it might have been brought "[f]or the convenience of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a). In determining whether transfer is appropriate, courts consider the following ten factors: (1) the convenience of witnesses; (2) the convenience of the parties; (3) the locus of operative facts; (4) the availability of process to compel the attendance of the unwilling witnesses; (5) the location of relevant documents and the relative ease of access to sources of proof; (6) the relative means of the parties; (7) the forum's familiarity with the governing law; (8) the weight accorded to the plaintiff's choice of forum; (9) trial efficiency; and (10) the interest of justice, based on the totality of circumstances. *Keitt v. N.Y. City*, 882 F. Supp. 2d 412, 459-60 (S.D.N.Y. 2011); *see*

also N.Y. Marine and Gen. Ins. Co. v. LaFarge No. Am., Inc., 599 F.3d 102, 112 (2d Cir. 2010) (setting forth similar factors). A plaintiff's choice of forum is accorded less deference where the plaintiff does not reside in the chosen forum and the operative events did not occur there. *See Irigorri v. United Tech. Corp.*, 274 F.3d 65, 72 (2d Cir. 2001).

Under Section 1404(a), transfer appears to be appropriate in this case. Nothing in the complaint suggests that any of the events giving rise to Plaintiff's claims occurred within this District or that any of the defendants reside in this District. Defendants' employer has its principal office in the Northern District of New York, the same district where Plaintiff resides. The Northern District of New York appears to be a more convenient forum for this action. Accordingly, the Court transfers this action to the United States District Court for the Northern District of New York. 28 U.S.C. § 1404(a); *see D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 106 (2d Cir. 2006) ("District courts have broad discretion in making determinations of convenience under Section 1404(a) and notions of convenience and fairness are considered on a case-by-case basis.").

CONCLUSION

The Clerk of Court is directed to transfer this action to the United States District Court for the Northern District of New York. Whether Plaintiff should be permitted to proceed further without prepayment of fees or be granted a preliminary injunction are determinations to be made by the transferee court. Summonses shall not issue from this Court. This order closes this action in this court.

The Court certifies, under 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: April 6, 2023
New York, New York

/s/ Laura Taylor Swain

LAURA TAYLOR SWAIN
Chief United States District Judge